IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

MFA.No. 1234 of 1998(A)

AGAINST THE ORDER DATED 20/02/1998 IN IA.199/85 IN
OA.440/1976 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANTS:

1.T.M.MATHEW,ROSE VILLA, AKATHETHARA,
VILLAGE, PALAKKAD – 8 BY POWER OF ATTORNEY P.K.RAMESHAN
NIRMALAYAM, AKATHETHARA, PALAKKAD – 8.

2.THRESIAMMA,D/O.JOSEPH, ROSE VILLA, PALAKKAD – 8
BY POWER OF ATTORNEY HOLDER P.K.RAMESHAN
NIRMALYAM, AKATHETHARA P.O., PALAKKAD – 8.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.P.N.K.ACHAN (SR)

RESPONDENTS:

1.THE CUSTODIAN OF VESTED FORESTS AND CONSERVATOR OF
FOREST, VESTED FORESTS CIRCLE, KOZHIKODE.

2.STATE OF KERALA, REP. BY THE CONSERVATOR OF
VESTED FOREST

BY SPL. GOVERNMENT PLEADER SRI.C.M.SURESH BABU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & M.N.KRISHNAN, JJ.

M.F.A.NO.1234 OF 1998 ()

Dated this the 9th day of November, 2006

J U D G M E N T

KOSHY,J.

The 1st respondent Kumudam approached the Forest Tribunal claiming that 9.708 hectors of land are not vested under the Kerala Private Forest (Vesting and Assignment) Act, 1971 and she is entitled to exemption under Sections 3(2) and 3(3) of the Act. The Forest Tribunal allowed her application under Sections 3(2) and 3(3) of the Act. Section 3(2) and 3(3) of the Act reads as follows:

> 2. Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.
>
> Explanation:- For the purpose of this sub section, 'cultivation' includes cultivation of trees or plants of any species.

> 3. Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with another lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 of the said Act.

It is an admitted case that land in question was originally covered by M.P.P.F. Act. Such lands are automatically vested in the Government in view of Section 3(1) with effect from 10.5.1971 unless it is exempted under Section 3(2) or Section 3 (3) of the Act. Under Section 3(2) exemption is allowed only if land is personally cultivated. Under Section 3(3) to claim exemption, intention of cultivation on the relevant date is enough but claimant must have valid title over the property.

2. Contending that the land in question was not a cultivated land and the material particulars were not placed before the Tribunal, a review petition was filed before the Tribunal under Section 8B of the Act. That petition was allowed. Present appellant filed a writ petition before this Court

contending that said Kumudam had sold the land to them and therefore Kumudam did not contest review petition properly. This Court directed the Tribunal to hear the appellants also and to pass fresh order. Accordingly this impugned order was passed. The whole question is whether claim of Kumudam under Section 3(2) and 3(3) of the Act was correctly allowed and whether there are any grounds to review the decision under Section 8B of the Act. After the review proceedings started, a commissioner was appointed. The commissioner clearly stated in Ext.C1 report that the land in question is full of Forest trees and the disputed area is lying contiguous to other forest areas of more than 100 acres and the part of Emoor Bhagavathi Vested Forest is called Edamala. The area is not a cultivated area so as to get exemption under Section 3(2). Then the question is whether there was valid title to the property of Kumudam on the relevant date and whether she had intention to cultivate the area on the relevant date to claim exemption under Section 3 (3). Ext.A1 registration deed would not show that Kumudam had title to the property in question. The land was not cultivated area when proceedings were taken.

Therefore that statement that there was intention to cultivate is also not a bona fide as for long years till she sold the land to appellants or thereafter area was not cultivated. It was held as follows:

> 3. The Review Petition (I.A.199/85 mentioned earlier) was filed by the respondents in the O.A. Against the said Kumudam contending that the O.A. - petitioner did not prove her title and that she did not actually prove that she was not having any land in excess of the ceiling limit. It was also contended that she had not adduced any legal evidence to show that there was any attempt on her part to cultivate the land. It is stated that the Tribunal did not consider the evidence in the case before pronouncing the judgment and that there are materials on records to prove that she was not entitled to get exemption u/s 3(2) or 3(3) of the Act. It was further contended that the Tribunal allowed the O.A on the basis of invalid concessions made by not challenging the evidence and affidavit filed by the said Kumudam. Again it was contended that the material evidence which will show that she was not entitled to get exemption u/s 3(2) or 3(3) of the Act was omitted to be produced and so the order passed by the Tribunal has to be reviewed.
>
> 4. As per order dated 10.2.1988 my learned predecessor allowed the review petition; the order passed in the O.A. was reviewed and the O.A. Was dismissed. Sri.T.M.Mathew and Smt.Thresiamma who are the supplemental respondents 2 and 3 in the review petition filed writ petition before the High court as O.P.No.9532/1988-I contending that they had obtained assignment of the O.A.schedule property

> from Kumudam mentioned above as per document dated 15.3.1979 and that the order in the review petition was passed by the Tribunal without noticed them and behind their back.
>
> 5. Since the aforesaid two persons were not parties to the review petition and since they had purchased the property from Kumudam as per the registered assignment deed of 1979, the order passed by this Tribunal in the review petition was set aside and this Tribunal was directed to reconsider the matter afresh after affording an opportunity of being heard to the petitioners in the writ petition and affording an opportunity of adducing evidence regarding the nature of the property in question."

The main contention raised before us was that no grounds are made out to attract review in Section 8B and there was no misrepresentation by the original claimants. Question is whether full particulars were made out. In the earlier proceedings the Government failed to show that the land was not under personal cultivation. By adducing the Commissioner's evidence in review proceedings it was shown that land is a forest land and this was not under personal cultivation. Apart from that the evidence regarding possession etc. were produced only for the period after 1970. Except Ext.A1 all documents are executing after 1981. Even if there is title mere

ownership will not enable the party to claim exemption under Section 3(2) or Section 3(3). Forest officials did not produce any relevant materials in the earlier proceedings or failed to show that land in question was an uncultivated thick forest area with full of forest trees. In the above circumstances, we are of the view that Section 8B was correctly invoked. Only by review forest wealth was protected. The land is inside a dense forest and is not liable to be exempted. Forest Tribunal has correctly analysed the matter and there is no merit in the appeal. Hence this appeal is dismissed.

J.B.KOSHY, JUDGE

M.N.KRISHNAN, JUDGE

prp

J.B.KOSHY & M.N.KRISHNAN, JJ.

M.F.A.NO.1234 OF 1998 ()

J U D G M E N T

9th November, 2006